IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4836 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHALCHANDRA J DHIVAR

Versus

SHANGVI INDUSTRIES

Appearance:

1. Special Civil Application No. 4836 of 1989

MR AK CLERK for Petitioner No. 1

MR VM TRIVEDI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 25/03/2004

CAV JUDGEMENT

The petitioner has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the award passed by the Labour

Court, Navsari on 15.04.1989 in Reference (LCN) No. 130/1985 whereby the reference was dismissed and it was held that the petitioner was retrenched after having been complied with the provisions contained in Section 25 (F) of the I.D. Act and the demand for reinstatement with back wages was denied.

2. It is the case of the petitioner that the petitioner had joined the services of the respondent from 06.12.1978 as a permanent workman and his services were terminated with effect from 01.05.1985 by an order dated 01.05.1985. The termination order did not specify the amount of retrenchment compensation having been offered or paid to the petitioner. The petitioner was not offered or paid the retrenchment compensation as per Section 25 F (b) of the I.D. Act at the time of his retrenchment. The petitioner was also not offered or paid at the time of retrenchment any other compensation, wages of leave, earned leave etc.

3. Being aggrieved by the said order of termination dated 01.04.1985, the petitioner raised a dispute about his termination which was referred to the Labour Court, Navsari being Reference No. (LCN) No. 130 of 1985 which was dismissed by the Labour Court by an award dated 15.04.1989 and it is this award which is under challenge in the present petition.

4. Mr. A.K. Clerk, learned advocate appearing for the petitioner submits that the petitioner was never offered or paid retrenchment compensation at the time of retrenchment. The petitioner had given a specific notice to the respondents on 07.05.1985 stating that the retrenchment compensation was not offered or paid to him and, therefore, termination was illegal. He has further submitted that in reply to the said notice, for the first time on 12.08.1985, the respondent stated that the retrenchment compensation was Rs.2700/- and it was offered to him but he has refused to accept the same and respondent was prepared to pay the same. The Labour Court has found that respondent has offered to pay retrenchment compensation vide letter dated 12.08.1985 in reply to notice of the petitioner. Thus, it is a finding of fact given by the Labour Court that offer was only made by the letter dated 12.08.1985. However, the said amount was not paid to the petitioner and, as per the Provisions contained in Section 25 F of the I.D. Act, the retrenchment compensation has to be paid at the time of the retrenchment. The very fact that the Labour Court has directed the respondent to pay the retrenchment compensation itself proves that the retrenchment

compensation was never offered or paid to the petitioner at the time of retrenchment. The Labour Court has wrongly placed reliance on the letter dated 01.05.1985 purported to have been signed by the petitioner as the petitioner has himself stated in his deposition that the respondent had obtained certain blank papers signed by the petitioner at the time of employment. Mr. Clerk has, therefore, submitted that the award of the Labour Court is clearly perverse and no reasonable man could have arrived at such conclusion which the Labour Court has arrived at.

5. Mr. Clerk has further submitted that the Labour Court has erred in ignoring the fact that the termination order dated 01.04.1985 did not mention or even refer to the retrenchment compensation. Even if it is assumed that the petitioner has refused to accept the retrenchment compensation at the time of retrenchment, it was the duty of the respondent to mention that fact and to send the said amount by Money Order or by any other mode or method to the petitioner. Except the oral statement of the respondent to the effect that retrenchment compensation was offered to the petitioner, there was no evidence on record to show that the same was offered and the petitioner had refused to accept the same.

6. Mr. Clerk has further submitted that the Labour Court has ignored the fact that the respondent was bound to make payment of retrenchment compensation on the basis of 15 days pay by firstly dividing monthly salary of Rs.900/- by 26 days and then multiplying it by 15 days and thereafter by number of completed years of service put in by the petitioner on the basis of the judgment of the Hon'ble Supreme Court in the case of JEEWANLAL (1929) LTD. ETC. V/S. APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT AND OTHER, A.I.R. 1984 SUPREME COURT 1842 (1984 LAB.I.C. 1458) wherein it is held that "for the purpose of computation of "fifteen days' wages" of a monthly-rated employee under sub-sec. (2) of S.4 the monthly wages last drawn by him should be treated as wages for 26 working days and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30." On the basis of this judgment, Mr. Clerk has submitted that the amount allegedly offered by the respondent to the petitioner was Rs.2700/- which was not the compensation under Section 25 F of the I.D. Act as interpreted by the Hon'ble Supreme Court. The amount of compensation, therefore, fell short of the legal requirement and, therefore, even assuming

that the said amount was offered, the termination of the petitioner was absolutely illegal and null and void.

7. Mr. Clerk has further relied on the decision of Calcutta High Court in the case of PURNA THEATRE V/S. STATE OF WEST BENGAL AND OTHERS, 1997 LAB.I.C. 997 wherein it is held that "Section 25-F(b) of the Act envisages payment of compensation equivalent to 15 days average pay as condition precedent. It is a mandatory requirement that if the amount offered towards retrenchment compensation fell short of amount that was required to be paid under clause (b) of Section 25 F of the Act, the retrenchment is void-ab-initio. Such a mistake in payment cannot be rectified after retrenchment was effected."

8. Mr. Clerk has further relied on the decision of the Bombay Court in the case of AURO ENGINEERING PRIVATE LIMITED, NASIK V/S. R.V. GADEKAR, MEMBER INDUSTRIAL COURT, NASIK AND OTHERS, 1992 LAB.I.C. 1362 wherein it is held that "considering the negative language used in Section 25 F, the section imposes a mandatory duty on the employer which is a condition precedent to retrenchment of workman. Consequently, contravention thereof however slight, vitiates the act of retrenchment itself. When a statute mandates a duty as a condition precedent for effecting retrenchment, there is no difficulty in holding that breach of the said condition invalidates the retrenchment and renders it void ab initio."

9. Mr. Clerk has further submitted that before retrenching the petitioner, the respondent has not complied with the provisions contained in Rule 81 of Industrial Disputes (Gujarat) Rules. For this purpose, he relied on the decision of the Bombay High Court in the case of TRADE-WINGS LIMITED V/S. PRABHAKAR DATTARARAM PHODKAR OF BOMBAY AND OTHERS, 1991 (1) CLR 480 wherein it is held that "Once it is held that the petitioners have failed to display the seniority list on 24.12.1984 it follows that there is breach of Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 which requires the employer to prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a Notice Board in conspicuous place in the premises of the Industrial establishment at least seven days before the actual date of retrenchment. A Division Bench of this Court in the case of NAVBHARAT HINDI DAILY V/S. NAVBHARAT SHRAMIK SANGHA reported in 1984 LAB.I.C. 445 held that strict compliance of Rule 81 is necessary. The

said provisions being mandatory the order of retrenchment of respondent No.9 will have to be quashed." Mr. Clerk has relied on the judgment of Trade-Wings Limited even for the purpose of calculation of retrenchment compensation wherein it is held that "There is no significant distinction between the provisions of Section 4(2) of the Payment of Gratuity Act and Section 25-F of the I.D. Act, so as not to make applicable the decision of the Supreme Court in the case of JIVANLAL (1929) LIMITED V/S. E. GOVINDAN AND OTHERS, A.I.R. 1984 S.C. 1848 which is rendered under the payment of Gratuity Act. Merely because the phrase 'average pay' has been separately defined in Section 2 (aaa) of Industrial Disputes Act, that does not detract from the view that retrenchment compensation should be computed on the basis of the monthly pay in respect of 26 working days."

10. Mr. Clerk has further submitted that if the provisions contained in Section 25 F are not complied with at the time of retrenching the workman, the order of retrenchment itself is void-ab-initio. For this purpose, he relied on the judgment of this Court in the case of M.P. RAMANANDI V/S. GUJARAT STATE WAREHOUSING CORPORATION, 26 (2) G.L.R. 1040 wherein it is held that "if the precondition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated, must be deemed to be in continuous service."

11. Mr. Clerk has lastly relied on the decision of this Court in the case of GRAM PANCHAYAT, DAMNAGAR V/S. SHARADKUMAR D. ACHARYA, 35 (1) G.L.R. 5759 wherein it is held that "Section 2 (oo) covers every case of termination of service except those which have embodied in the definition and, therefore, discharge from employment or termination of service of a probationer, would also amount to retrenchment and compliance with the requirement of Section 25F in the case of such termination is essential and the necessary consequence of non-compliance with Section 25F would render termination void."

12. Based on the aforesaid judgments and the facts of the petitioner's case, Mr. Clerk has submitted that the Labour Court has not arrived at the just and correct conclusion and hence, the Labour Court was not justified in rejecting the Reference by holding that the respondent has complied with the provisions contained in Section 25F of the Act. The award of the Labour Court is, therefore, required to be quashed and set aside.

13. Mr. V.M. Trivedi, learned advocate appearing for the respondent submits that the Labour Court, after examining the relevant facts and materials produced before it, has come to the conclusion that the respondent has complied with the terms and conditions of the provisions contained in Section 25F of the I.D. Act and this being the finding of fact cannot be assailed in the petition filed under Article 227 of the Constitution of India. He has further submitted that respondent has issued notice on 01.04.1985 for retrenchment of the petitioner with effect from 30.04.1985 and that on 30.04.1985, the petitioner has refused to settle his accounts and that on 01.05.1985, the petitioner has come to the office and accepted the salary for the month of April, 1985. However, he has not accepted the retrenchment compensation of Rs.2,700/- on the ground that as per his calculation, the amount of retrenchment compensation has come to Rs. 13,221/-. The petitioner was retrenched as a result of implementing the economy measure and no person was employed at the place of the petitioner. After 01.05.1985, the petitioner engaged in the gainful employment and only with a view to get more money from the respondent, the petitioner has raised the Industrial Disputes Act. Mr. Trivedi has further submitted that once the amount of retrenchment compensation having been offered and the same having not been accepted by the petitioner, it cannot be said that the respondent has committed any breach of the provisions contained in Section 25-F of the I.D. Act. If there is any error in calculation, the same could have been rectified if it would have been pointed out. But simply on that basis, it cannot be said that the respondent has not offered any amount of retrenchment. The judgments relied upon by the petitioner are not applicable to the facts of the present case as in those cases, there was violation of the provisions contained in Section 25-F of the Act. Here, there is a factual finding given by the Labour Court that the said provisions have been complied with. With regard to the petitioner's contention of non-compliance with Rule 81 of the Industrial Disputes (Gujarat) Rules, Mr. Trivedi has submitted that the petitioner was the junior most and no person was engaged in his place. Moreover, this contention was not raised before the Labour Court and hence it is not open for the petitioner to raise this issue before this Court. Lastly, he has submitted that the petitioner has raised several issues in this petition which have not been raised before the Labour Court and for the purpose of deciding these issues, factual background is required to be looked into and for that purpose, the matter requires

to be sent back to the Labour Court for fresh adjudication after giving opportunities to both the parties for leading evidence and therefore, the Labour Court may be directed to take appropriate decision in the matter. This matter being very old and if the same is required to be decided here before this Court, the respondent is ready and willing to settle the matter by offering a fair and reasonable amount to the petitioner.

14. After having heard the learned advocates appearing for the respective parties, after having given my anxious thoughts to their submissions, and after having carefully examined the impugned award and judgment of the Labour Court and also the authorities cited before me, I am of the view that the petitioner's prayer for quashing and setting aside the award of the Labour Court and declaring the petitioner's retrenchment as illegal and null and void, can not be accepted looking to the facts and circumstances of the case. The petitioner's alternative prayer of remanding the matter to the Labour Court could have been accepted had there not been the long span of 19 years between the date of retrenchment and the date of this Court's decision. This Court, therefore, inclines to rest its decision on awarding fair and reasonable compensation to the petitioner.

15. The petitioner was retrenched from 01.05.1985. Notice for retrenchment was issued on 01.04.1985. The Labour Court has recorded the finding that the petitioner had gone to collect his salary for the month of April, 1985 and he has been offered retrenchment compensation of Rs.2700/-. However, he had refused to accept the said amount and demanded more amount. Even if one calculates the amount of retrenchment compensation on the basis of 15 days average pay by dividing month's salary by 26 days and multiplying it by number of completed years' service, it would not have come to the amount demanded by the petitioner. The respondent employer would not have bothered to pay the said negligible shortfall to the petitioner. This minor and insignificant lapse, even if it is assumed to be so, can not be stretched to such an extent as would entail the consequences of violation of the provisions of Section 25-F of the Industrial Disputes Act. The underlined object of calculating gratuity under the payment of Gratuity Act and the retrenchment compensation under the Industrial Disputes Act may be the same, but if there is any shortfall, the consequence under the Payment of Gratuity Act is not so serious as it would be under the Industrial Disputes Act, if the petitioner's arguments are accepted. Under the Payment of Gratuity Act, the amount of shortfall may be ordered

to be paid with interest or penalty, but, instead of applying this standard in the context of retrenchment compensation under the Industrial Disputes Act, declaring such retrenchment as illegal or null and void is nothing but stretching or far-fatching the statutory provisions. It is for this reason, with all due respect, I do not find myself in agreement with the view expressed by the Calcutta High Court in the case of Purna Theatre V/s. State of West Bengal & Others (Supra) that if the amount offered towards retrenchment compensation fell short of amount that was required to be paid under clause (b) of Section 25-F of the Act, the retrenchment is void ab-initio and that such a mistake in payment cannot be rectified after retrenchment was effected. In any view, it is not such a big mistake which cannot be rectified subsequently. For this very reason, the decision of Bombay High Court in the case of Auro Engineering Private Ltd. (Supra) would not be of much assistance to the petitioner.

16. The Division Bench judgment of this Court in the case of M.P. Ramanandi V/s. Gujarat State Ware Housing Corporation (Supra) would not render any assistance to the petitioner as the facts of that case with that of the petitioner's case are quite distinguishable. In that case, the petitioner's services were terminated without payment of retrenchment compensation. A small and insignificant shortfall in the payment of retrenchment compensation cannot be put on such a high padestral of non-payment of retrenchment compensation.

17. Another judgment of the Division Bench of this Court in the case of Gram Panchayat Damnagar V/s. Sharadkumar D. Acharya (Supra) is also rendered in a situation where no retrenchment compensation was paid and hence, it is distinguishable on facts.

18. Coming to the second issue of non-compliance with the provisions contained in Rule 81 of Industrial Disputes (Gujarat) Rules, raised by Mr. Clerk, it is found that it has been raised for the first time before this Court. The Labour Court had no occasion to consider this issue, record any evidence in this regard and come to any conclusion. Even otherwise, allegation made regarding retention of junior to the petitioner was denied. The remand of the matter to the Labour Court after so many years would not serve any useful purpose. Even otherwise, considering the fact that the petitioner has not been in the employment of the respondent firm for well over the period of 19 years, I do not think it appropriate to put him back in service of the respondent.

It would be proper that some fair and reasonable compensation be paid to the petitioner in lieu of back wages and reinstatement for the alleged breach of S. 25-F and other Provisions of the Act. The course which is adopted here finds support from the decisions of the Hon'ble Supreme Court in the case of Sain Steel Products V/s. Naipal Singh & Others, AIR 2001 S.C. 2401 and Shriram Refrigeration Industries V/s. Industrial Tribunal, Hyderabad and others (2002) 9 S.C.C. 708. I, therefore, direct the respondent to pay an amount of Rs.75,000/- to the petitioner or to deposit the said amount with the Labour Court, Navsari within three months from today. If the amount is deposited in the Labour Court, the petitioner is hereby permitted to withdraw the said amount.

19. In view of the above decision, the award of the Labour Court stands modified to the above extent. The petition is accordingly allowed in part. Rule is made absolute to the above extent, without any order as to costs.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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